said Act. In 1972 the Internal Security Act was revised and the sections under which the accused was charged were placed in Part III of the revised Act, but the word "Part II' referred to in the said Proclamation was not revised. Hence Harun J. held that proof that the acts were committed in a security area was not established. In my opinion, the matter can easily be resolved by invoking section 12 of the Revision of Laws Act, 1968, Act 1 which enacts:

"12. Subsidiary legislation made under any law and in force on the date on which that law as revised comes into force shall continue in force until otherwise provided; and references in any such subsidiary legislation to the law under which it was made, or to any part thereof, or to any other revised law shall be construed as references to the revised law or to that other law as revised."

I agree with the learned Lord President that *Samivellu* v. *Public Prosecutor*[8] was wrongly decided. Proclamation P.U.(A) 148/69 is law which the court can take judicial notice. Judicial notice is the cognizance taken by the court itself of certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary; see *Phipson* on Evidence, 11th Ed., page 10. "With regard to the facts enumerated in section 57, if their existence comes into question, the parties who assert their existence or the contrary need not, in the first instance, produce any evidence in support of their assertions. They need only ask the judge to say whether these facts exist or not, and if the judge's own knowledge will not help him, then he must look the matter up; further the judge can, if he thinks proper, call upon the parties to assist him. But in making his investigation the judge is emancipated from all the rules of evidence laid down for the investigation of facts in general. He may resort to any source of information which he finds handy, which he thinks help him": see *Woodroffe & Ameer Ali* on Law of Evidence, 12th Ed., Vol. 2, page 1143. Judicial notice can therefore be taken of P.U.(A) 148/69 issued by His Majesty in the exercise of legislative power. But judicial notice cannot be taken of a notification issued by any authority in the exercise of its executive functions.

Order accordingly.

Solicitors: *R. Rajasingam & Co.; Chew & Co.; Jagjit Singh & Co.; Karpal Singh & Co.*

CHONG SOON KOY v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya) and Wan Suleiman F.J.) March 26, 1977]
[Kuala Lumpur — Federal Court Criminal Appeal No. 44 of 1976]

Criminal Law and Procedure — Possession of firearm and ammunition — Trial under Internal Security Act — Security case — Admissibility of statement leading to discovery of firearm and ammunition — Evidence Act, 1950, s. 27 — Internal Security Act, 1960, ss. 57 and 80.

Evidence — Statement leading to discovery of firearm and ammunition — Admissibility — Evidence Act, 1950, s. 27.

This was an appeal from the judgment of the High Court convicting the appellant on charges of possession of a firearm and ammunition under the Internal Security Act. On appeal the main contentions were against the trial of the case as a security offence and against the admissibility of a statement leading to the discovery of the firearm and ammunition.

Held: (1) the 1969 Proclamation of Emergency is still in force and therefore the Emergency (Essential Powers) Ordinance, 1969 and the Essential (Security Cases) Regulations, 1975 are still in force;

(2) the Essential (Security Cases) Regulations are not *ultra vires* the Emergency (Essential Powers) Ordinance, 1969;

(3) there has been no improper use of section 57 of the Internal Security Act in this case;

(4) the sanction of the charge against the accused did not require the signature of the Public Prosecutor personally;

(5) the statement relating to the discovery of the firearm and ammunition was rightly admitted in evidence.

Cases referred to:-

(1) *Johnson Tan Han Seng* v. *Public Prosecutor* [1977] 2 M.L.J. 66.

(2) *Public Prosecutor* v. *Khong Teng Khen & Anor.* [1976] 2 M.L.J. 166.

(3) *Pulukuri Kotayya v. King Emperor* 74 I.A. 65.

The following authorities were also cited in argument: *Earl of Autrim* [1966] 3 W.L.R. 1141; *British Coal Corporation* v. *R.* [1935] A.E.R. Reprint 139, 146; *Willcock* v. *Muckle* [1951] 2 K.B. 844, 851; *Koltaya* 34 I.A. 65; *Shri Irfan Ali* [1970] Cr. L.J. 603; *Karam Din* A.I.R. 1929 Lahore 338, 339; *Deoman* (1960) 61 Cr. L.J. 1505 and A.I.R. 1960 S.C. 1125; *Soh Ten Seng* [1964] M.L.J. 380, 381-2; *Chua Eow Huat* [1970] 2 M.L.J. 29; and *Lee Boon Gan* v. *Regina* [1954] M.L.J. 103.

FEDERAL COURT.

R. Rajasingam (*Ajmer Singh* with him) for the appellant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Suffian L.P. (delivering the judgment of the Court): This is an appeal from the judgment of the High Court in Penang convicting the appellant on a charge under para. (a) of subsection (1) of section 57 of the Internal Security Act ("ISA") and on another charge under para. (b) of the same provision.

It is submitted that the 1969 Proclamation of Emergency published as P.U.(A) 145/69 has by force of changed circumstances and effluxion of time ceased to be in force and therefore Ordinance No. 1 ("the Ordinance") published as P.U.(A) 149/69 is no longer in force and further His Majesty therefore no longer has power to make the Essential (Security Cases) Regulations, 1975, published as P.U.(A) 320 and 362 of 1975 ("the 1975 regulations"), in accordance with which the accused was charged, tried, convicted and sentenced to death. The submission is made by Mr. Rajasingam on the same lines as he did in Federal

Court Criminal Appeals 39, 40, 43 and 46 of 1976.[1] With due respect we agree for the reasons stated therein that the proclamation is still in force and that therefore the Ordinance and the 1975 regulations are valid.

It is submitted that the 1975 regulations are *ultra vires* Ordinance No. 1. Another panel of this court has held by a majority in *Public Prosecutor* v. *Khong Teng Khen & Anor.*,[2] and we agree, that these regulations are not *ultra vires* the Ordinance.

It is submitted that charging the accused under section 57 of the Internal Security Act ("ISA") was an improper use of that law which was intended for different circumstances and for different purposes. This court by another panel has dealt with the powers of the Attorney-General in regard to criminal charges in appeals 39, 40, 43 and 46 of 1976[1] and we see no reason to disagree with the conclusion therein. There has been no improper use of section 57 of ISA.

It is submitted that the sanction of the charge against the accused required by section 80 ISA should have been signed by the Public Prosecutor himself and not by a mere Deputy Public Prosecutor as was done here. Such a consent is lawful as the law does not require the sanction to be signed by the Public Prosecutor himself.

The most cogent argument advanced on behalf of the appellant relates to the evidence against him. That consists of a statement alleged to have been voluntarily given by him to the police under caution and admitted by the learned trial judge; and of the evidence of PW3 and others who said that the accused led them to a cave where the pistol and ammunition in question were found and with the control of which the accused was charged and convicted. It is said that without these two bits of evidence there was no evidence whatsoever against the accused, who in a statement from the dock denied having any control over the pistol and ammunition.

We proceed to consider this argument on the basis that the cautioned statement should not have been admitted.

What about the operation of section 27 of the Evidence Act then?

The evidence is as follows: One Fong Choon Leng was arrested. Partly as a result of information given by him about the existence of a firearm and its relation to the accused, on March 19, 1976, the accused was arrested by Special Branch. On April 7, 1976, Mr. Ong Thye Peng (PW3) of the C.I.D. recorded a statement from the accused. At approximately 3.55 p.m. while recording the statement Mr. Ong was given by the accused "information with regard to a firearm and some ammunition which he had hidden in the Berapit Hills in Bukit Mertajam". Mr. Ong then stopped recording the statement and was with other police officers led by the accused to the foot of Berapit Hills. Mr. Ong continued his evidence as follows:

"The whole party trekked up hilly terrain for about an hour in single file, with accused leading the way. After an hour accused stopped and pointed to a spot which was sort of cavern formed by boulders.... Inside the cavern accused pointed to a spot where I saw a slab of thin granite of 1½ ft. diameter oval. Underneath this granite was a black plastic container.... I directed accused to carry this out of the cavern to open space outside. From this plastic container, accused took out two ammunition boxes.... The accused opened one of the two containers. Inside were two packages. In one package there was an automatic Llama Special (P3 identified) and two magazines (P4 A and B identified).... In [another package] were 37 rounds of .32 ammunition (P7 and P6 identified)...."

With reference to section 27 of the Evidence Act, which reads as follows:

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether such information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved",

what was the fact discovered? The fact discovered embraces the place from which the pistol and ammunition were produced and the knowledge of the accused as to this.

What was the information supplied by the accused relating distinctly to the fact thereby discovered? It was "information with regard to a firearm and some ammunition which he had hidden in the Berapit Hills in Bukit Mertajam" in the words of Mr. Ong. All that evidence is admissible, since in the words of the Privy Council at page 77 in *Pulukuri Kotayya* v. *King Emperor*,[3] a decision on the equivalent section of the Indian Evidence Act: —

"...In their Lordships' view, it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A.' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

In view of the above authority all the evidence of Mr. Ong's which we have reproduced is admissible and that evidence alone, apart from the cautioned statement, is enough to justify the verdict arrived at by the learned trial judge.

It is submitted that the information supplied by the accused was not admissible, since he was arrested under section 73(1) ISA and at the time he gave the statement he was not "a person accused of any offence" within section 27. There is no merit in this argument, since these words mean "a person accused at the time or subsequently of any offence."

It is true that as stated the accused denied knowing the contents of the receptacle containing the pistol and ammunition. But whether his denial raised a doubt on the prosecution case is a matter for the learned trial judge and as he had considered this matter very carefully we do not think it right to disturb his judgment and we therefore dismiss this appeal. The conviction is upheld and the sentence affirmed.

Appeal dismissed.

Solicitors: *Ajmer Singh Sandhu & Co.*